



Categorical Exemption Appeal

743 VERMONT ST

DATE: March 16, 2020
TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Lisa Gibson, Environmental Review Officer – (415) 575-9032
Rachel Schuett, rachel.schuett@sfgov.org - (415) 575-9030
RE: Planning Record No. 2017-014666APL-02
Appeal of Categorical Exemption for 743 VERMONT ST
HEARING DATE: March 24, 2020
ATTACHMENT(S): Department of Building Inspection Notice of Violation #201928061
Unauthorized Unit Affidavit

PROJECT SPONSOR: Mr. William Walters, (415) 602-1959
APPELLANT(S): Mr. Ryan J. Patterson, Zacks, Freedman & Patterson (on behalf of Meg McKnight)

INTRODUCTION

This memorandum and the attached documents are a response to the letter of appeal to the board of supervisors (the board) regarding the planning department's (the department) issuance of a categorical exemption under the California Environmental Quality Act (CEQA determination) for the proposed project at 743 Vermont Street (project).

The department, pursuant to Article 19 of the CEQA Guidelines, issued a categorical exemption for the project on September 5, 2019 finding that the proposed project is exempt from the California Environmental Quality Act (CEQA) as a Class 1 categorical exemption.

The decision before the board is whether to uphold the department's decision to issue a categorical exemption and deny the appeal, or to overturn the department's decision to issue a categorical exemption and return the project to the department staff for additional environmental review.

SITE DESCRIPTION AND EXISTING USE

The project site is located on the east side of Vermont Street between 19th and 20th streets, Block 4074, Lot 021 in the Potrero Hill neighborhood. The 2,500 square foot, upward sloping lot is within the RH-2 (Residential, House-Two Family) zoning district and 40-X Height and Bulk District. The site is occupied by a 3-story, approximately 2,366 square foot single-family house, built in 1904. Planning Department staff determined that the building is not a historic resource.

PROJECT DESCRIPTION

The proposed project includes demolition of the rear portion of the dwelling beginning approximately 25 feet from the front of the building; demolition of the existing gable roof beginning approximately 16 feet from the front of the building; and construction of a new addition to extend the rear footprint 4'-11" to the east and within 1'-0" to the north. The proposed addition would be the same for both the second and third floors. The proposed project includes a remodeled kitchen and bedroom on the second floor, and a new master bedroom and remodeled bath on the third floor. There would be a new deck off the master bedroom to the north. The existing interior winder stairway would be removed and replaced with a new stairway with landing. The extent of the addition/remodel would have a flat roof approximately 6 inches above the existing ridgeline. In addition, the project would include the legalization of an existing bathroom and 3 storage rooms at the ground floor level (garage) to comply with Notice of Violation #201928061.

BACKGROUND

On March 30, 2018, William Walters (hereinafter project sponsor) filed an application with the department for a CEQA determination. The project description at this time did not include legalization of four ground floor rooms but was otherwise as described above.

On September 20, 2018 the department determined that the project was categorically exempt under CEQA Class 1 – Existing Facilities, and that no further environmental review was required.

On April 8, 2019 the department rescinded the September 20, 2018 categorical exemption due to a potential change in the project's physical scope of work associated with the legalization of four ground floor rooms, including a full bathroom which was constructed without the benefit of permits.

On July 10, 2019, the project sponsor submitted a revised plan set showing that no additional work would be required to legalize the ground floor rooms.

On September 5, 2019 the department determined that the July 10, 2019 revised project was categorically exempt under CEQA Class 1 – Existing Facilities, and that no further environmental review was required.

On January 9, 2020, the Planning Commission passed a resolution to not take discretionary review, and to approve the building permit (#2017.1027.2504) as proposed, per the July 10, 2019 plan set, and as described in the September 5, 2019 categorical exemption.

On February 7, 2020, Mr. Ryan J. Patterson, Zacks, Freedman & Patterson (on behalf of Meg McKnight) filed an appeal of the September 5, 2019 categorical exemption determination.

CEQA GUIDELINES

Categorical Exemptions

In accordance with CEQA section 21084, CEQA Guidelines sections 15301 through 15333 list classes of projects that have been determined not to have a significant effect on the environment and are exempt from further environmental review.

CEQA Guidelines section 15301 (Existing Facilities, or Class 1) consists of operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of the existing or former use. This includes additions to existing structures provided that the addition will not result in an increase of more than 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less. In urban areas, where all public services and facilities are available, as in this case, the maximum addition is 10,000 square feet. The proposed project would add 331 square feet to the 2,366 square foot house.

In determining the significance of environmental effects caused by a project, CEQA Guidelines section 15064(f) states that the decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency. CEQA Guidelines section 15064(f)(5) offers the following guidance: "Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumption predicated upon facts, and expert opinion supported by facts."

PLANNING DEPARTMENT RESPONSES

The concerns raised in the appeal letter are addressed in the responses below.

Response 1: The project description in the September 5, 2019 categorical exemption accurately describes the proposed project for the purposes of CEQA and for the Planning Commission approval of the building permit for the proposed project on January 9, 2020.

The ground floor rooms are currently used as storage. Legalization of an accessory dwelling unit at the ground (garage) level was never proposed in the project application or the environmental evaluation application, which was submitted March 30, 2018. As such, the initial September 2018 categorical exemption, which is moot because it was rescinded, did not mention the legalization of the ground floor rooms.

A complaint regarding the ground floor rooms was filed anonymously with the Department of Building Inspection on February 12, 2019. The complaint cites the fact that the plans associated with building permit #2017.1027.2504 show a storage room with a full bathroom on the ground floor (garage) level. These rooms have no direct connection to the house above, and there is no permit on file for installation of a full bathroom. The Notice of Violation (#201928061) was issued and posted on March 6, 2019. The building permit application (#2019.0403.7052) for legalization of the ground floor rooms was routed to the department by the Department of Building Inspection on April 5, 2019. The department rescinded the September 20, 2018 categorical exemption on April 8, 2019 because it was not clear whether the physical scope of work for the project would change due to the Project's legalization of the ground floor rooms.

Subsequently, the project sponsor submitted a revised plan set (July 10, 2019) which showed that no additional work would be required to legalize those rooms. The department issued a second categorical exemption on September 5, 2019, which included the following language in the project description: “the project would include the legalization of existing bathroom and 3 storage rooms at the 1st level (garage) to comply with Notice of Violation #201928061.” This describes what is shown on the plan set.

Planning Department staff, both at the January 9, 2020 Planning Commission hearing, and in the staff report for that hearing, mischaracterized the legalization of the ground floor rooms in response to NOV #201928061, as legalization of a potential unauthorized dwelling unit or UDU. The rooms are being used for storage, at the present time; this is confirmed by the Building Inspector’s notes on Complaint Number 201928061. In addition, the project sponsor submitted a signed affidavit on February 7, 2019 asserting that the ground floor rooms do not comprise a dwelling unit, which was confirmed by a records search for eviction records by the Rent Board. The project sponsor has not indicated a desire to add an accessory dwelling unit on the property. The building permit filed to legalize the ground floor rooms seeks to remedy the fact that no building permit was issued for work completed on that floor to comply with NOV #201928061. The Planning Commission resolution did not mention the existence or legalization of a potential unauthorized dwelling unit, since no legalization of a dwelling unit was proposed. Legalization of a potential unauthorized dwelling would take place through a separate process with the Planning Department and the Department of Building Inspection, and may not require environmental review.

Moreover, in this case, the legalization of the ground floor rooms to comply with NOV #201928061 would not result in any physical changes to the building and; therefore, the legalization would not be considered a “project” under CEQA Guidelines Sections 15060(c) and 15378 because there is no direct or indirect physical change in the environment. Activities that are not considered a project do not require evaluation under the California Environmental Quality Act. Therefore, the inclusion of language regarding the legalization of the ground floor rooms does not affect the adequacy of this categorical exemption. It is merely a portion of the whole project. That said, both the July 10, 2019 plans and the September 5, 2019 categorical exemption correctly reference the proposed legalization of the ground floor rooms.

Response 2: The proposed project described in the September 5, 2019 categorical exemption accurately describes the existing residence as a single-family home, given that this is its present, legalized use.

If the ground floor rooms were proposed to become legalized as an accessory dwelling unit, the house would become a two-unit building. A house with an unauthorized accessory dwelling unit is still considered a single-family home. This is not the case here as the project does not include adding an accessory unit, legal or otherwise. In addition, neither the planning department nor the department of building inspection has identified the presence of an unauthorized dwelling unit on the project site, rendering the appellant’s argument moot.

Response 3: The project does not include any changes to the ground floor rooms. Should the project sponsor decide to pursue creation of an accessory dwelling unit within the existing single-family home, an application would need to be filed with the department. The legalization of such a unit would not require a hearing before the planning commission, unless an application for discretionary review is filed. Planning

code section 317 only applies when the removal of a dwelling unit is proposed (including removal of an unauthorized dwelling unit).

CONCLUSION

The department has determined that the proposed project is categorically exempt from environmental review under CEQA on the basis that: (1) the project meets the definition of one or more of the classes of projects that the Secretary of Resources has found do not have a significant effect on the environment, and (2) none of the exceptions specified in CEQA Guidelines section 15300.2 prohibiting the use of a categorical exemption are applicable to the project. The appellant has not demonstrated that the department's determination is not supported by substantial evidence in the record.

For the reasons stated above and in the September 5, 2019 CEQA categorical exemption determination, the CEQA determination complies with the requirements of CEQA and the project is appropriately exempt from environmental review pursuant to the cited exemption. The department therefore respectfully recommends that the board uphold the CEQA categorical exemption determination and deny the appeal of the CEQA determination.

COMPLAINT DATA SHEET**Complaint Number:** 201928061

Owner/Agent: OWNER DATA SUPPRESSED

Owner's Phone: --

Contact Name: --

Contact Phone: --

Complainant: COMPLAINANT DATA SUPPRESSED

Date Filed:

Location: 743 VERMONT ST

Block: 4074

Lot: 021

Site:

Rating:

Occupancy Code:

Received By: Mauricio Hernandez

Division: BID

Complainant's Phone:

Complaint Source: TELEPHONE

Assigned to Division: BID

Description: At the garage/ ground floor Pa 201710272504. Show a storage room w/full bath. No direct connection of garage to house above. no permit on file to build a full bathroom at garage.

Instructions:

INSPECTOR INFORMATION

DIVISION	INSPECTOR	ID	DISTRICT	PRIORITY
BID	KEANE	6288		

REFERRAL INFORMATION**COMPLAINT STATUS AND COMMENTS**

DATE	TYPE	DIV	INSPECTOR	STATUS	COMMENT
02/12/19	CASE OPENED	BID	Gonzalez	CASE RECEIVED	
02/12/19	OTHER BLDG/HOUSING VIOLATION	BID	Keane	CASE UPDATE	Case reviewed and assigned to complaint investigation team per MH; slw
02/14/19	OTHER BLDG/HOUSING VIOLATION	BID	Keane	CASE UPDATE	No entry. Left contact info. tdk.
02/20/19	OTHER BLDG/HOUSING VIOLATION	BID	Keane	CASE UPDATE	Spoke with architect who is going to schedule an inspection with owner. tdk.
02/27/19	OTHER BLDG/HOUSING VIOLATION	BID	Keane	CASE UPDATE	Gained entry. Reinspection required , unable to inspect interior of storage room as it was full of storage boxes. tdk.
03/01/19	OTHER BLDG/HOUSING VIOLATION	BID	Keane	CASE UPDATE	Returned call to owner . Left message. tdk.
03/06/19	OTHER BLDG/HOUSING VIOLATION	BID	Keane	FIRST NOV SENT	Issued and posted 1st NOV. tdk.
03/07/19	OTHER BLDG/HOUSING VIOLATION	INS	Keane	CASE UPDATE	1st NOV mailed per D. Keane /tt
05/20/19	OTHER BLDG/HOUSING VIOLATION	BID	Keane	CASE UPDATE	Pa. 201904037052 has been filed and routed to planning on 4/5/19. tdk.
09/20/19	OTHER BLDG/HOUSING VIOLATION	BID	Keane	CASE UPDATE	Routing shows still in DCP. tdk.

COMPLAINT ACTION BY DIVISION**NOV (HIS):****NOV (BID):**

03/06/19

Inspector Contact Information

[Online Permit and Complaint Tracking home page.](#)**Technical Support for Online Services**

If you need help or have a question about this service, please visit our FAQ area.

AFFIDAVIT

COMPLIANCE WITH ORDINANCE 208-15



San Francisco Planning

1650 MISSION STREET, SUITE 400
SAN FRANCISCO, CA 94103
TEL: 415.575.9121

UNAUTHORIZED UNIT AFFIDAVIT

Project Address: 743 VERMONT ST., SAN FRANCISCO, CA, 94107
Block/Lot (APN): 4074/021

"Unauthorized Unit" shall mean one or more rooms within a building that have been used, without the benefit of a building permit, as a separate and distinct living or sleeping space independent from Residential Units on the same property.

"Independent" shall mean that (i) the space has independent access that does not require entering a Residential Unit on the property and (ii) there is no open, visual connection to a Residential Unit on the property.

I, Terri-Diann Pickering, do hereby declare as follows:

To the best of my knowledge:

- There is an Unauthorized Unit, as defined above, located on the subject property.
- There is not an Unauthorized Unit, as defined above, located on the subject property.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

EXECUTED ON THIS DAY, February 7, 2019, IN San Francisco, CA.

[Signature]
Signature

TERRI-DIANN PICKERING
Name (Printed)

Applicant / Owner
Relationship to Project
(i.e. Owner, Architect, etc.)

(415) 602-1959
Phone

JohnC1957@aol.com
Email

Submit completed Affidavit upon request by Planning Staff or in conjunction with a UDU Screening Request form.



SAN FRANCISCO PLANNING DEPARTMENT

Planning Department Request for Eviction History Documentation

1650 Mission St
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

(Date) 2/6/2019

ATTN: Van Lam
Rent Stabilization and Arbitration Board
25 Van Ness Avenue, Suite 320
San Francisco, CA 94102-6033

RE: Address of Permit Work: 743 Vermont st
Assessor's Block/Lot: 4074/021
BPA # / Case #: 201710272504/2017-01466

Project Type

- Merger – Planning Code Section 317
- Enlargement / Alteration / Reconstruction – Planning Code Section 181
- Legalization of Existing Dwelling Unit – Planning Code Section 207.3
- Accessory Dwelling Unit Planning – Planning Code Section 207(c)(4)

Pursuant to the Planning Code Section indicated above, please provide information from the Rent Board's records regarding possible evictions at the above referenced unit(s) on or after:

- 12/10/13: for projects subject to Planning code 317(e)4 or 181(c)3
(Search records for eviction notices under 37.9(a)(8) through (14))
- 3/13/14: for projects subject to Planning Code Section 207.3
(Search records for evictions notices under 37.9(a)(8) through (14))
- 10 years prior to the following date: _____
(Search records for eviction notices under 37.9(a)(9) through (14) (10 years) and under 37.9(a)(8) (5 years))

Sincerely,
Planner Cathleen
Campbell

Digitally signed by Cathleen Campbell
DN: cn=Cathleen Campbell, ou=Planning
Department, ou=City and County of San Francisco,
email=cathleen.campbell@sfgov.org,
c=US
Date: 2019.02.06 17:02:24 -0800

cc: Jennifer Rakowski- Rent Board Supervisor

Rent Board Response to Request from Planning Department for Eviction History Documentation

Re: _____

This confirms that the undersigned employee of the San Francisco Rent Board has reviewed its records pertaining to the above-referenced unit(s) to determine whether there is any evidence of evictions on or after the date specified. All searches are based upon the street addresses provided.

No related eviction notices were filed at the Rent Board after:

- 12/10/13
- 03/13/14
- 10 years prior to the following date: _____

Yes, an eviction notice was filed at the Rent Board after:

- 12/10/13
- 03/13/14
- 10 years prior to the following date: _____
 - o See attached documents.

There are no other Rent Board records evidencing an eviction after:

- 12/10/13
- 03/13/14
- 10 years prior to the following date: _____

Yes, there are other Rent Board records evidencing a an eviction after:

- 12/10/13
- 03/13/14
- 10 years prior to the following date: _____
 - o See attached documents.

Signed:

Dated:

Van Lam
Citizens Complaint Officer

The Rent Board is the originating custodian of these records; the applicability of these records to Planning permit decisions resides with the Planning Department.